SUPREME COURT OF THE UNITED STATES.

No. 15, Original.—October Term, 1934.

State of Wisconsin, Plaintiff,
vs.
State of Michigan.

[May 20, 1935.]

Mr. Justice Butler delivered the opinion of the Court.

This case concerns the Green Bay section of the boundary between these States. In *Michigan* v. *Wisconsin*, 270 U. S. 295, the entire boundary was involved. As to that section, the question was whether islands within the bay and other islands surrounded by its waters and those of Lake Michigan belonged to one or the other State. The territory of Wisconsin was created by an Act of April 20, 1836, c. 54, 5 Stat. 10. The stretch of boundary in question is described: ". . . to a point in the middle of said lake [Michigan], and opposite the main channel of Green Bay, and through said channel and Green Bay to the mouth of the Menomonie river . . . ." By the Enabling Act of June 15, 1836, c. 99, 5 Stat. 49, under which Michigan became a State January 26, 1837, it is described in the reverse direction: ". . . thence, down the centre of the main channel of the same [Menominee river], to the centre of the most usual ship channel of the Green bay of Lake Michigan; thence, through the centre of the most usual ship channel of the said bay to the middle of Lake Michigan . . . ".

As to the section there involved, we said:

"In determining the boundary through this section, the question is not embarrassed by differences of description. [p. 314] . . . The evidence shows that there are two distinct ship channels, to either of which this description might apply. From the mouth of the Menominee, the channel, according to the Michigan claim, proceeds across the waters of Green Bay in an easterly direction until near the westerly shore of the Door County peninsula; thence, in close proximity to the shore, in a northerly direction to a point opposite Death's Door Channel (or *Porte des Morts*); thence through that channel into Lake Michigan. The channel claimed

by Wisconsin, after leaving the mouth of the Menominee, turns to the north and pursues a northerly direction to a point opposite the Rock Island passage which lies between Rock Island and St. Martin's Island; thence through the Rock Island passage into Lake Michigan. The territory in dispute lies between these rival channels, and embraces two groups of islands: (1) Chambers Island, the Strawberry Islands, and a few others, small and unnamed, all within the main waters of Green Bay west of the Door County peninsula; and (2) Rock, Washington, Detroit and Plum islands, lying between Death's Door Channel and the Rock Island passage, at the north end of the peninsula. The evidence as to which of the two ship channels was the usual one at the time of the adoption of the Michigan Enabling Act is not only conflicting, but of such inconclusive character that, standing alone, we could base no decree upon it with any feeling of certainty. [p. 315] . . . But, it is not necessary, for . . . the title of Wisconsin to the disputed area now in question, is established by long possession and acquiescence; and this conclusion is justified by evidence and concessions of the most substantial character. [p. 316] . . . The result is that complainant has failed to maintain her case in any particular; and that the claims of Wisconsin as to the location of the boundary in each of the three sections are sustained." p. 319.

The decree (272 U. S. 398) defines the section:

"thence down the center of the main channel of the . . . Menominee, to the center of the harbor entrance of said Menominee River, thence in a direct line to the most usual ship channel of Green Bay, passing to the north of Green Island and westerly of Chambers Island and through the Rock Island Passage into Lake Michigan, by courses and distances as follows: From a point midway between the outer ends of the Menominee River piers, thence east by south, seven and one-half miles to the center of the most usual ship channel of the Green Bay, thence along said ship channel north by east one-eighth east, eight and seven-eighths miles, thence continuing along said ship channel north by east seven-eighths east, twenty-seven miles, thence continuing along said ship channel, east one-fourth north, ten and one-fourth miles, thence east three-fourths north to the boundary between the State of Michigan and the State of Wisconsin in the middle of Lake Michigan."

Michigan concedes that the first distance should be seven and one-eighth instead of seven and one-half miles. Wisconsin insists that the first course should be eliminated and a more northerly one substituted for it. The parties agree that the third course was intended to be "northeast seven-eighths east" instead of "north by east seven-eighths east". Wisconsin claims that, even if corrected

as to the course and distance mentioned, the description would deprive her of about 35 miles of fishing area opposite the city of Menominee which, as she says, has always been under her jurisdiction. And she prays that this description be changed so as to read:

"to the outer end of the piers at Menominee being the center of the harbor entrance of said Menominee River, thence in a direct line to a point half-way from Chambers Island to the Michigan mainland measured from the water's edge at the narrowest channel; thence in a direct line to the west end of the Whaleback Shoal; thence in a direct line to a point half-way from the water's edge adjacent to Boyer's Bluff to the water's edge on the Michigan mainland at the mouth of Bark River; thence in a direct line to a point half-way from the water's edge at Boyer's Bluff to Driscoll Shoal; thence in a direct line to the light on St. Martin's Shoal; thence east three-quarters north to the boundary between the State of Michigan and the State of Wisconsin in the middle of Lake Michigan."

We appointed Frederick F. Faville special master. And, in accordance with our order, he has taken the evidence, made findings of fact, stated his conclusions of law and recommendations for a decree, all of which with a transcript of the testimony, the maps, charts and other exhibits, are included in the report he has submitted to the court.

Michigan, while conceding the court has power to make the decree correspond with the opinion in *Michigan* v. *Wisconsin,* asserts that the boundary line here in controversy was involved in the former case and suggests that the court is without jurisdiction to establish any other line. The evidence shows, and the master found: After announcement of our decision, counsel for the parties agreed upon a form of decree to carry it into effect and consented that it be entered. Due to mutual mistakes, it was erroneous in the respects above indicated and because of their consent it was adopted and entered by the court. The location of the boundary line dividing the waters of the bay between the States was not in issue. No evidence was offered for the determination of that question. It was all addressed to the controversy concerning the islands—the matter then in dispute. The master rightly concluded the court has jurisdiction to correct the decree (*Thompson* v. *Maxwell,* 95 U. S. 391, 397, 399) and to establish the true boundary line through Green Bay. *Hopkins* v. *Lee,* 6 Wheat. 109, 113, 114. *Oklahoma* v. *Texas,* 256 U. S. 70, 86.

The parties rightly assume that there is no difference between the description of the boundary through Green Bay given in the Act creating Wisconsin Territory and that specified in the Michigan Enabling Act. 270 U. S. 314. The evidence shows, and the master found: When these Acts were passed, there was no "main" or "most usual ship" channel. Movements of sailing vessels, then used, were not limited to any channel and, except to avoid islands, shoals and reefs, they went directly to their destinations. Ships came and went between Lake Michigan and Green Bay to and from the mouth of the Menominee, and the southerly end of the bay, the site of the city of Green Bay. They passed east and west of Chambers Island and through the Strawberry passage. Neither State has ever exercised jurisdiction over the triangular area at the mouth of the Menominee or over any other waters of the bay that are now in controversy.

As it is impossible to identify any channel in the bay as that indicated by the Acts referred to, the intention of Congress must be otherwise ascertained. By principles of international law, that apply also to boundaries between States constituting this country, it is well established that when a navigable stream is a boundary between States the middle of the main channel, as distinguished from the geographical middle, limits the jurisdiction of each unless otherwise fixed by agreement or understanding between the parties. That rule rests upon equitable considerations and is intended to safeguard to each State equality of access and right of navigation in the stream. *Iowa* v. *Illinois*, 147 U. S. 1, 7. This court has held that, on occasion, the principle of the thalweg is also applicable to bays, estuaries and other arms of the sea. *Louisiana* v. *Mississippi*, 202 U. S. 1, 50. *New Jersey* v. *Delaware*, 291 U. S. 361, 379. The doctrine of the thalweg is a modification of the more ancient principle which required equal division of territory and was adopted in order to preserve to each State equality of right in the beneficial uses of the boundary streams as a means of navigation. *Wisconsin* v. *Minnesota*, 252 U. S. 273, 282. No right of either party to use the waters of the bay for navigation is here involved. Questions of territorial jurisdiction in respect of fishing constitute the occasion of the present controversy. And it confidently may be assumed that when fixing the boundary lines in the waters of the bay Congress intended that Michigan and the State to be erected out of Wisconsin Territory should have equal-

ity of right and opportunity in respect of these waters, including navigation, fishing and other uses. On the facts found, equality of right can best be attained by a division of the area as nearly equal as conveniently may be made, having regard to the matters heretofore litigated and finally adjudged between these States. The rule that the States stand on an equal level or plane under our constitutional system (*Wyoming* v. *Colorado*, 259 U. S. 419, 465, 470) makes in favor of that construction of the boundary provisions under consideration. Cf. *Connecticut* v. *Massachusetts*, 282 U. S. 660, 670.

The pleadings reflect opposing claims as to the title to some part of tracts called "Grassy Island" and "Sugar Island", bordering on the north bank, and a short distance from the mouth, of the Menominee river. The master found that neither is an island and that each is a part of the mainland of Michigan, and concluded that both belong to that State. Wisconsin does not except to any of the findings or conclusions in respect of these tracts.

The decree to be entered in this case will establish the boundary through and along, or near, the middle of the waters of Green bay that are here involved. That line commences at a point midway between the piers at the harbor entrance of the Menominee River; thence east by south seven and one-eighth miles; thence approximately north by east one-eighth east, about eight and seven-eighths miles; thence to and along a line in or near the middle of the bay to a point west of the Rock Island passage; thence easterly by courses and distances to be designated through that passage to the boundary in the middle of Lake Michigan. The decree will appropriately define the tracts called "Grassy Island" and "Sugar Island" and declare them to belong to Michigan.

The case is referred to the special master, and he is directed to prepare and submit to the court a form of decree which will give effect to this decision. Inasmuch as the preparation of the decree may involve the ascertainment of physical facts and the formulation of technical descriptions, the master is authorized to hear counsel, take evidence and procure such assistance, if any, as may be necessary to enable him conveniently and promptly to discharge the duties here imposed upon him. He may call upon counsel to propose forms of decree. He is directed to give them opportunity to submit objections to the form prepared by him and to include the objections, if any, in his report.

It is so ordered.

SUPREME COURT OF THE UNITED STATES.

No. 12, Original.—October Term, 1935.

State of Wisconsin, Plaintiff,
vs.
State of Michigan.

[March 16, 1936.]

DECREE.

Michigan brought suit in this court against Wisconsin to have ascertained and established a part of the boundary between them. March 1, 1926, we announced our decision. 270 U. S. 295. To carry it into effect, the States acting through their counsel agreed upon and submitted a form of decree. November 22, 1926, the court relying upon the agreement and consent of the parties entered the decree proposed. 272 U. S. 398.

November 7, 1932, Wisconsin brought this suit against Michigan, alleging that as a result of mistakes of the parties the decree of November 22, 1926, did not carry our decision into effect as to the tracts called "Grassy Island" and "Sugar Island" on the north bank and a short distance from the mouth of the Menominee River and as to the Green bay section of the boundary. Issue was joined, and a special master took evidence, heard counsel for the States, made findings of fact, stated his conclusions of law and recommended a form of decree. The parties filed exceptions to his report and, after hearing counsel, the court May 20, 1935, decided (295 U. S. 455, 462):

"The decree to be entered in this case will establish the boundary through and along, or near, the middle of the waters of Green bay that are here involved. That line commences at a point midway between the piers at the harbor entrance of the Menominee River; thence east by south seven and one-eighth miles; thence approximately north by east one-eighth east, about eight and seven-eighths miles; thence to and along a line in or near the middle of the bay to a point west of the Rock Island passage; thence easterly by courses and distances to be designated through that passage to the boundary in the middle of Lake Michigan. The decree will appropriately define the tracts called 'Grassy Island' and 'Sugar Island' and declare them to belong to Michigan."

And the court ordered (p. 463):

"The case is referred to the special master, and he is directed to prepare and submit to the court a form of decree which will give

effect to this decision. Inasmuch as the preparation of the decree may involve the ascertainment of physical facts and the formulation of technical descriptions, the master is authorized to hear counsel, take evidence and procure such assistance, if any, as may be necessary to enable him conveniently and promptly to discharge the duties here imposed upon him. He may call upon counsel to propose forms of decree. He is directed to give them opportunity to submit objections to the form prepared by him and to include the objections, if any, in his report."

The master took evidence, viewed the locus, heard counsel and in accordance with the court's directions filed his report. It includes a form of decree. Wisconsin objects to the proposed decree in respect of the part of the boundary in Green bay, Rock Island passage and Lake Michigan not defined by our decision of May 20, 1935, and submits for consideration alternative forms of decree. Michigan urges adoption of that proposed by the master.

After hearing counsel for the respective States, the court does hereby order, adjudge and decree:

1. Wisconsin's objections are overruled. The definitions of the boundary recommended by the master are approved and adopted.

2. The decree of this court, entered November 22, 1926, in the suit brought by Michigan against Wisconsin, is modified by striking therefrom the provisions that purport to define the parts of the boundary in the Menominee River downstream from the concrete bridge on United States Highway No. 41 between the cities of Menominee, Michigan, and Marinette, Wisconsin, and in the waters of Green bay, the Rock Island passage and Lake Michigan and by inserting, in lieu of the parts of the decree so stricken out, definitions of the boundary recommended by the master.

3. The decree in *Michigan* v. *Wisconsin*, as modified by this decree, defines and establishes the boundary between these States. As modified, it is as follows:

It is ordered, adjudged and decreed:

That the boundary between the States of Michigan and Wisconsin along the following course be and it is hereby fixed and finally established as follows:

From Lake Superior through the middle of the main channel of the Montreal River, to the headwaters thereof, as established in the survey of Captain Cram at the junction of the Pine River and Balsam Creek (also known as Lehman's Creek) thence along the line of the survey of William A. Burt of 1847, to the center of the channel between Middle and South Islands in the Lake of the

Desert, thence continuing along the line of said survey to the shore of Lake Brulé, thence along the southerly shore of Lake Brulé to the center of the main channel of the River Brulé, thence down the center of the main channel of the rivers Brulé and Menominee, to the intersection of the longitudinal center line of the concrete bridge on United States Highway No. 41 between the cities of Menominee, Michigan, and Marinette Wisconsin, with the center line of the stream crossing of said bridge, which said point of intersection bears north forty-two degrees and thirty minutes (42° 30′) east, a distance of four hundred twenty-four and five-tenths (424.5) feet from the southerly end of said stream crossing of said bridge, and a distance of nine hundred and ninety-nine and ninety-three hundredths (999.98) feet upon the same course from the center line of Eggner street as now laid out and existing in the city of Marinette, Wisconsin, and which said point also bears south forty-two degrees and thirty minutes (42° 30′) west, two thousand three hundred fifty-eight and one-tenth (2,358.1) feet from the south line of Ogden avenue as now laid out and existing in the city of Menominee, Michigan, all these courses being measured along the center line of said bridge and its approaches, thence south seventy-four degrees and twenty-eight minutes (74° 28′) east, one thousand one hundred twenty-seven and seven-tenths (1,127.7) feet to a point from which a monument set upon a nearby island consisting of an iron pin set in a concrete block of approximately one-half ton bears south eighteen degrees and fifty-five minutes (18° 55′) west, a distance of seventy-one (71) feet, thence south sixty-six degrees and fifty-four minutes (66° 54′) east, one thousand seven hundred thirty-nine and three-tenths (1,739.3) feet to a point from which a monument set in a nearby island consisting of an iron pin set in a concrete block of approximately one-half ton bears south nineteen degrees and thirty minutes (19° 30′) west, one hundred sixty and two-tenths (160.2) feet, thence along the center line of the dredged channel of the Menominee River through the center of the movable span of the drawbridge between the cities of Menominee and Marinette, and continuing along the center of said dredged channel of said river to a point midway between the outer ends of the Menominee Harbor piers. Provided, that the section of the boundary in the Brulé and Menominee rivers shall follow the main channel thereof, except that where islands occur in the Brulé River or in the Menominee River, down to and inclusive of the Quinnesec Falls, extending to the line between sections 5 and 6, Township 38 north, of Range 20 east, of the Wisconsin Public Survey, extended

across said river, the line shall pass through the channel nearest the Wisconsin bank, so as to throw all such islands into Michigan; and where islands occur in the Menominee River below the Quinnesec Falls, and upstream from the above-mentioned concrete bridge on United States Highway No. 41, the line shall pass through the channel nearest the Michigan bank, so as to throw all such islands into Wisconsin.

From a point midway between the outer ends of the Menominee Harbor piers, thence upon a true course of which the azimuth is one hundred one degrees and fifteen minutes (101° 15′) for eleven thousand four hundred seventy (11,470) meters, the same being approximately east by south for seven and one-eighth (7⅛) miles.

Thence upon a true course of which the azimuth is eleven degrees and forty-five minutes (11° 45′) for fourteen thousand two hundred fifty (14,250) meters, the same being approximately north by east for eight and seven-eighths (8⅞) miles.

Thence upon a true course of which the azimuth is fifty-eight degrees and fifty minutes (58° 50′) for eight thousand two hundred ninety (8,290) meters, the same being approximately northeast by east one-fourth east for five and one-eighth (5⅛) miles.

Thence upon a true course of which the azimuth is forty-two degrees and eighteen minutes (42° 18′) for sixteen thousand seven hundred eighty (16,780) meters, the same being approximately northeast one-fourth north for ten and one-half (10½) miles.

Thence upon a true course of which the azimuth is twenty-eight degrees and ten minutes (28° 10′) for eleven thousand five hundred eighty (11,580) meters, the same being approximately north northeast one-half east for seven and one-fourth (7¼) miles.

Thence upon a true course of which the azimuth is ninety degrees (90°) for twenty-seven thousand one hundred seventy (27,170) meters, the same being approximately east for sixteen and seven-eighths (16⅞) miles.

Thence upon a true course of which the azimuth is one hundred twenty degrees (120°) for forty-five thousand six hundred (45,600) meters, the same being approximately southeast by east three-eighths east for twenty-eight and three-eighths (28⅜) miles to the center of Lake Michigan.

In the descriptions contained in this decree, all azimuths are computed from 0 as true north, clockwise.

The costs of this action, including the fees and expenses incurred by the special master, shall be divided equally between the parties.